

**IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MEMO ENDORSED

AQUAVIT PHARMACEUTICALS, INC.

Plaintiff,

v.

U-BIO MED, INC.
GLOBAL MEDI PRODUCTS, and
NYUN SHI EUM aka NYEON-SIK EUM,

Defendants.

NO. 1:19-cv-3351-VEC-RWL

**DEFENDANTS' MOTION TO AMEND
THE DEFAULT JUDGMENT AGAINST GLOBAL MEDI PRODUCTS**

Defendants U-Bio Med, Inc. ("UBM") and Nyeon-Sik Eum ("EUM") move to amend the Default Judgment Against Global Medi Products ("GMP") [DE 192] pursuant to Federal Rule of Civil Procedure 59(e) by revising the last sentence of the Judgment.

The last sentence of the Judgment states, "Damages will be determined at the conclusion of the case *against the remaining defendants*" (emphasis added). Defendants believe that the last sentence was added to satisfy the provision of Fed.R.Civ.P. 54(b) that unless "the court expressly determines that there is no just reason for delay" in entering the judgment, then the judgment would not finalize Plaintiff's action against GMP.

But as currently worded, the last sentence could be used to falsely claim or suggest that Plaintiff had not only "defeated" GMP, but had also defeated UBM and EUM on the merits, that a relationship existed between GMP and Defendants UBM and EUM, and that Plaintiff was owed damages from UBM and EUM that would be determined at the conclusion of the case. But all of that would be untrue.

GMP is a fictitious Korean entity. It does not exist. There is no evidence of any association of this fictitious “GMP” entity with Defendants except for its mention in the “Exclusive Worldwide Licensing Agreement” (“EWLA”), a document drafted by Plaintiff that is attached as Exhibit 1 to the Complaint [DE 1]. GMP is named on the first page of the EWLA after the qualifier, “as applicable.” But GMP is not mentioned anywhere else in the EWLA. There is no signature line for GMP in the EWLA. No one signed the EWLA on behalf of GMP.

Defendants UBM and EUM have denied every factual allegation in the Complaint concerning the existence of GMP and any connection between the fictitious GMP entity and UBM or EUM. Compare Complaint [DE 1] at ¶¶ 19, 20, 53, and 189 with the corresponding paragraphs of Defendants’ Answers [DE 98, 113, and 129]. As a fictitious entity, GMP did not appear, had no representation, and took no part in this action.

Both sides are seeking damages from the other and no damages have yet been adjudicated in this action.

Accordingly, Defendants request that the last sentence be revised to state:

“There is no just reason for delaying entry of a final judgment against Global Medi Products. The rights and liabilities of the remaining parties may be adjudicated separately, and judgment entered as to them at the conclusion of the case.”

This revision complies with the requirement of Rule 54(b) using neutral language that is not susceptible to being misused.

Respectfully submitted,

Dated: September 28, 2020

/s/ Thomas J. Vetter

Motion DENIED. The sentence at issue is clear and does not in any way imply that Defendant U-Bio Med, Inc. or Defendant Nyeon-Sik Eum currently or will in the future owe Plaintiff any damages.
SO ORDERED.

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Date: September 30, 2020

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE